



Data Protection Act 2018

2018 CHAPTER 12

PART 6

ENFORCEMENT

Guidance

160 Guidance about regulatory action

- (1) The Commissioner must produce and publish guidance about how the Commissioner proposes to exercise the Commissioner's functions in connection with—
 - (a) information notices,
 - (b) assessment notices,
 - (c) enforcement notices, and
 - (d) penalty notices.
- (2) The Commissioner may produce and publish guidance about how the Commissioner proposes to exercise the Commissioner's other functions under this Part.
- (3) In relation to information notices, the guidance must include—
 - (a) provision specifying factors to be considered in determining the time at which, or the period within which, information is to be required to be provided;
 - (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an information notice to a person in reliance on section 142(7) (urgent cases);
 - (c) provision about how the Commissioner will determine how to proceed if a person does not comply with an information notice.
- (4) In relation to assessment notices, the guidance must include—
 - (a) provision specifying factors to be considered in determining whether to give an assessment notice to a person;

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- (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an assessment notice in reliance on section 146(8) or (9) (urgent cases);
 - (c) provision specifying descriptions of documents or information that—
 - (i) are not to be examined or inspected in accordance with an assessment notice, or
 - (ii) are to be so examined or inspected only by a person of a description specified in the guidance;
 - (d) provision about the nature of inspections and examinations carried out in accordance with an assessment notice;
 - (e) provision about the nature of interviews carried out in accordance with an assessment notice;
 - (f) provision about the preparation, issuing and publication by the Commissioner of assessment reports in respect of controllers and processors that have been given assessment notices;
 - (g) provision about how the Commissioner will determine how to proceed if a person does not comply with an assessment notice.
- (5) The guidance produced in accordance with subsection (4)(c) must include provisions that relate to—
- (a) documents and information concerning an individual's physical or mental health;
 - (b) documents and information concerning the provision of social care for an individual.
- (6) In relation to enforcement notices, the guidance must include—
- (a) provision specifying factors to be considered in determining whether to give an enforcement notice to a person;
 - (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an enforcement notice to a person in reliance on section 150(8) (urgent cases);
 - (c) provision about how the Commissioner will determine how to proceed if a person does not comply with an enforcement notice.
- (7) In relation to penalty notices, the guidance must include—
- (a) provision about the circumstances in which the Commissioner would consider it appropriate to issue a penalty notice;
 - (b) provision about the circumstances in which the Commissioner would consider it appropriate to allow a person to make oral representations about the Commissioner's intention to give the person a penalty notice;
 - (c) provision explaining how the Commissioner will determine the amount of penalties;
 - (d) provision about how the Commissioner will determine how to proceed if a person does not comply with a penalty notice.
- (8) The Commissioner—
- (a) may alter or replace guidance produced under this section, and
 - (b) must publish any altered or replacement guidance.
- (9) Before producing guidance under this section (including any altered or replacement guidance), the Commissioner must consult—

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- (a) the Secretary of State, and
 - (b) such other persons as the Commissioner considers appropriate.
- (10) Section 161 applies in relation to the first guidance under subsection (1).
- (11) The Commissioner must arrange for other guidance under this section (including any altered or replacement guidance) to be laid before Parliament.
- (12) In this section, “social care” has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 9(3) of that Act).

161 Approval of first guidance about regulatory action

- (1) When the first guidance is produced under section 160(1)—
- (a) the Commissioner must submit the final version to the Secretary of State, and
 - (b) the Secretary of State must lay the guidance before Parliament.
- (2) If, within the 40-day period, either House of Parliament resolves not to approve the guidance—
- (a) the Commissioner must not issue the guidance, and
 - (b) the Commissioner must produce another version of the guidance (and this section applies to that version).
- (3) If, within the 40-day period, no such resolution is made—
- (a) the Commissioner must issue the guidance, and
 - (b) the guidance comes into force at the end of the period of 21 days beginning with the day on which it is issued.
- (4) Nothing in subsection (2)(a) prevents another version of the guidance being laid before Parliament.
- (5) In this section, “the 40-day period” means—
- (a) if the guidance is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or
 - (b) if the guidance is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.
- (6) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8(1)(y) added by [2022 c. 18 \(N.I.\) Sch. 3 para. 78\(3\)](#)